

## Appendix A: Indirect Effects -- Real Property Owned by the Official

**Chart A: Old Rules**

<b>Within 300 feet</b>	<b>300 to 2,500 feet</b>	<b>Beyond 2,500 feet</b>
Presumed material absent a showing of no financial effect.	Material if \$10,000 effect on the FMV or \$1,000 effect on rental value.	Presumed not to be material unless specific circumstances make a \$10,000 effect on the FMV or \$1,000 effect on rental value foreseeable, and the effect will not be substantially the same as the effect on 25% of the properties within a 2,500 foot radius of the boundaries of the official's real property or there are not at least 10 properties under separate ownership within a 2,500 foot radius of the official's property.

**Chart B: New Rules**

<b>Within 500 feet</b>	<b>500 feet and Beyond</b>
Presumed material absent a showing of no financial effect.	<i>Presumed not to be material.</i> Rebutted by proof of special circumstances.

**Chart C: Combined Chart**

	<b>Within 300 feet</b>	<b>300 to 500 feet</b>	<b>500 to 2,500 feet</b>	<b>2,500 ft and beyond</b>
<b>Old Rules</b>	Presumed material absent a showing of no financial effect.	Material if \$10,000 effect on the FMV or \$1,000 effect on rental value.	Material if \$10,000 effect on the FMV or \$1,000 effect on rental value.	Presumed not to be material unless specific circumstances make a \$10,000 effect on the FMV or \$1,000 effect on rental value foreseeable, and the effect will not be substantially the same as the effect on 25% of the properties within a 2,500 foot radius of the boundaries of the official's real property or there are not at least 10 properties under separate ownership within a 2,500 foot radius of the official's property.
<b>New Rules</b>	Presumed material absent a showing of no financial effect.	Presumed material absent a showing of no financial effect.	<i>Presumed not to be material.</i> Rebutted by proof of special circumstances.	<i>Presumed not to be material.</i> Rebutted by proof of special circumstances.

## **Appendix B: Fact-Patterns**

### **(a) Within 300 feet (former rule).**

The 300-foot standard in the former rule has now been subsumed into the 500-foot rule in the proposed amendments. The standard applicable to this 300-foot zone is the same as that under the new rule applicable to the entire 500-foot zone. The effect is considered material if there is any financial effect on the value of the real property in which the official has an interest.

### **(b) Beyond 300 feet but within 500 feet.**

The standard applicable to this zone will be changed. Under the prior standard applicable to the official's real property located beyond 300 feet, but within 2,500 feet of the subject property, the effect was considered material if there was a \$10,000 or greater effect on the fair market value of the real property, or a \$1,000 effect on the rental value. Under the new rules, this area between 300 feet and 500 feet of the real property that is the subject of the governmental decision has been moved to the direct effect standard and the material financial effect on the official's real property is presumed to be material unless there is no financial effect on the value of the official's real property.

*"The Parks and Recreation Commission and the city council of the City of Lake Forest will be considering several options regarding the planned development of Regency/Normandale Park. What are currently two large parks, adjacent to each other, but separated by Regency Lane, are being updated and replanned with new soccer and baseball fields, a skate park, facilities and parking lots.... Mayor Herzog's residence is located on Coventry Lane near the intersection of Brighton Lane and Coventry, approximately five hundred (500) feet from the nearest portion of the park...." (Leroy Advice Letter, No. A-99-301.)*

The Mayor was able to participate in the decision so long as the decision did not have a reasonably foreseeable financial effect of \$10,000 or more on the fair market value of his residence. Under the new rule, the effect will be considered material unless there will be no financial effect on the value of the residence.

### **(c) Beyond 500 feet, but within 2,500 feet.**

The standard applicable to this zone will be changed. Under the prior standard applicable to the official's real property that was beyond 300 feet, but within 2,500 feet of the subject property, the financial effect is considered material if there was a \$10,000 or more effect on the fair market value of the real property, or a \$1,000 effect on the rental value. Under the new rule, there is a presumption of nonmateriality, absent special circumstances.

*"You are a planning commissioner for the City of Scotts Valley. Scotts Valley is located in northeastern Santa Cruz County, and has a population of approximately*

10,698 as of January 2000. There are a total of 2,667 single-family dwelling units within a geographic area of approximately five square miles. A new housing proposal called the Glenwood project is being processed by the city and will be going through public hearings in the near future. The project proposes 67 new single family homes and dedication of open space and park uses. You own a fully furnished two-bedroom town home at 6029 Scotts Valley Drive which is located approximately 1,030 feet from the closest border of the Glenwood project site." (Biddison Advice Letter, No. A-00-149.)

Conclusion: The official had a conflict of interest but was able to participate under the "public generally" exception pursuant to regulation 18707.2. Under the revised materiality rule, the official is presumed not to have a conflict of interest in the first instance. Further, there are no specific circumstances regarding the new development, its financial effect, and the nature of the real property in which the public official has an economic interest to rebut the presumption.

**(d) Beyond 2,500 feet (former rule).**

The standard applicable to this zone will be changed from the monetary thresholds to the factors discussed in subdivision (c) above. However, although the terminology has been changed, the presumption of no materiality is the same as the prior standard.

*"In addition, you are concerned about the stadium project which involves the purchase of several gravel quarries by a developer. You have informed us that most of the area will be developed for industrial and possibly some commercial uses. The closest quarry involved in the purchase is 1,200 feet northeast of your lots. The parcel that will be used for the stadium, should the need for the stadium arise, is 3,000 feet south of your lots. The developer may ultimately request city assistance in the purchase of the property."*

\* \* \*

*"Applying the regulation, we first consider the foreseeable effects of the proposed stadium on your property. It seems likely that the construction of a major sports stadium, even 3,000 feet away from your property, will cause major changes in your property values. Although your property is currently used for residential purposes, you stated in your letter that it is zoned commercial. Property zoned for commercial use that is located so close to a major sports stadium would presumably be very valuable. While you may not intend to change the use of the property at this time, the Commission has held that the intent of the property owner at the time of the decision is not determinative of the potential financial effect of the decision on the owner's financial interest." (Diaz Advice Letter, Nos. A-89-425 and A-89-437.)*

Under the former materiality rule, and the revised rule, the official is presumed not to have a conflict of interest in the first instance. However, under the former rule there were specific circumstances making it reasonably foreseeable that the official's

property would be affected by the amounts set out in the regulation. Thus, the presumption was rebutted.

Under the new rule, it appears that there continue to be specific circumstances regarding the governmental decision, its financial effect, and the nature of the real property in which the public official has an economic interest, which make it reasonably foreseeable that the decision will have a material financial effect on the development potential or income producing potential of the property since the official owns commercially-zoned property within 3,000 feet (a bit less than 2/3rds of a mile) of the proposed stadium.